



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via E-Mail and First Class Mail

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DEC 07 2018

RE: MUR 6793
Jason Posey

Dear Mr. Hilder and Ms. McGuire:

On March 11, 2014, and March 25, 2015, the Federal Election Commission notified your client, Jason Posey, of a complaint and supplemental complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. Copies of the complaint and supplemental complaint were forwarded to your client at that time.

Upon further review of the allegations contained in the complaint and supplemental complaint, the Commission, on December 4, 2018, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Christine C. Gallagher, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENTS: Steve Stockman for Senate and Daniel J. Wholihan MUR 6793
6 in his official capacity as treasurer
7 Steve Stockman
8 The Center for the American Future, Inc.
9 Jason Posey
10

11 **I. INTRODUCTION**

12 The Complaint alleges that then-Congressman Steve Stockman impermissibly coordinated
13 with the Center for the American Future, Inc. (“CAF”), a 501(c)(4) organization, on a mailer
14 expressly advocating Stockman’s election to the Senate in 2014, and that the mailer lacked the
15 requisite disclaimer, in violation of the Federal Election Campaign Act of 1971, as amended (the
16 “Act”). According to the Complaint, Stockman coordinated with the founder of CAF, Jason
17 Posey, who had previously served as treasurer of Stockman’s Senate committee, Steve Stockman
18 for Senate and Daniel Wholihan in his official capacity as treasurer (“Committee”).¹ Respondents
19 denied the allegations, supported by Posey’s sworn affidavit.

20 A subsequent criminal indictment in the U.S. District Court for the Southern District of
21 Texas against Steve Stockman and Jason Posey that revealed additional facts about the mailer that
22 is the subject of MUR 6793. The indictment alleged, *inter alia*, that the mailer was coordinated
23 between Stockman, the Committee, Posey, and CAF, and that Posey falsely stated in his affidavit
24 filed with the Commission that no such coordination occurred.² Stockman and Posey were
25 charged with knowingly and willfully making and causing to make excessive contributions to

¹ Compl. at 1-2 (Mar. 7, 2014).

² MUR 6793 Memorandum to the Commission (Apr. 7, 2017); First Superseding Indictment, *United States v. Stephen E. Stockman, Jason T. Posey*, 4:17-CR-116 (S.D. Tex. Mar. 28, 2017) (“Criminal Indictment”); Complaint, *United States v. Stephen E. Stockman*, H17-0331M (S.D. Tex. Mar. 17, 2017).

1 Stockman's Senate Committee in violation of 52 U.S.C. §§ 30116(a)(1)(A) and (a)(7)(B)(i),
2 among other violations. Posey was charged with falsification of records in a federal investigation
3 for the false affidavit filed with the Commission.³

4 Following the criminal indictment, Posey pled guilty to mail fraud, wire fraud, and money
5 laundering.⁴ On July 31, 2018, Posey, as part of his plea agreement, and based on his financial
6 circumstances, agreed to make payments of \$200 a month beginning August 1, 2018, and
7 continuing until he is incarcerated, in anticipation of his restitution debt for mail and wire fraud
8 and money laundering, which amount is yet to be determined by the court.⁵ Posey's sentencing
9 hearing is scheduled for November 20, 2018.

10 Stockman was found guilty of 23 criminal counts following a four-week jury trial,
11 including aiding and abetting the making and causing to make excessive contributions
12 aggregating in excess of \$25,000 in violation of 52 U.S.C. §§ 30116(a)(1)(A), (a)(7)(B)(i) and
13 30109(d)(1)(A)(i).⁶ Based on the First Superseding Indictment and the jury verdict, on July 3,
14 2018, the court issued an order imposing a money judgment as to Stockman in the amount of
15 \$1,250,571.65 for forfeiture of property derived from the mail and wire fraud and money

³ See 18 U.S.C. § 1519; Criminal Indictment at 36-37.

⁴ See 18 U.S.C. §§ 2, 1341, 1343, 1957; Plea Agreement and Plea Agreement-Addendum, *United States v. Jason T. Posey*, H-17-116S-03 (S.D. Tex. Oct. 11, 2017) ("Posey Plea Agreement").

⁵ See Agreed Order for Monthly Payments, *United States v. Jason T. Posey*, H-17-116S-03 (S.D. Tex. July 31, 2018).

⁶ See Verdict, *United States v. Stephen E. Stockman*, H-17-116-S (S.D. Tex. Apr. 12, 2018). On May 28, 2018, Stockman filed a Motion for Judgment of Acquittal. Stockman's Rule 29 Motion for Judgment of Acquittal, *United States v. Stephen E. Stockman*, 4:17-cr-0016(2) (May 28, 2018). On June 13, 2018, Stockman's motion was denied. Order, *United States v. Stephen E. Stockman*, H-17-116-2 (June 13, 2018) ("Order Denying Motion for Judgment of Acquittal").

1 laundering offenses, which will become final and included in the judgment at Stockman's
2 sentencing hearing scheduled for November 7, 2018.⁷

3 As discussed below, the Commission dismisses the allegations that Posey and CAF made,
4 and Stockman and the Committee received, prohibited in-kind contributions in connection with
5 the mailer. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

6 II. FACTS

7 Steve Stockman was the U.S. Representative for Texas's 36th Congressional District from
8 January 2013 through January 2015. On December 18, 2013, Stockman filed a Statement of
9 Candidacy for the March 4, 2014, Republican primary election for U.S. Senate in Texas,⁸ and
10 designated the Committee as his principal campaign committee for that election.⁹

11 In August 2013, Jason Posey registered CAF in Texas as a nonprofit corporation; the
12 entity dissolved on January 29, 2016.¹⁰ On CAF's Texas Secretary of State filings, Posey is listed
13 as CAF's Director; in his Supplemental Response to the Complaint, Posey identifies himself as its
14 President.¹¹ At the time he registered CAF, it appears that Posey also worked as a consultant for

⁷ See Order Imposing Money Judgment, *United States v. Stephen E. Stockman*, 4:17-cr-116-2 (July 5, 2018); Order Resetting Sentencing, *United States v. Stephen E. Stockman*, 4:17-cr-116-2 (July 24, 2018).

⁸ See Steve Stockman Statement of Candidacy, FEC Form 2, Dec. 18, 2013. Stockman lost the primary election.

⁹ See Steve Stockman for Senate Statement of Organization, FEC Form 1, Dec. 13, 2013. The Committee organized as "Steve Stockman for Senate" and later changed its name to "Team Stockman." See Amended Statement of Organization, FEC Form 1, July 17, 2014. Thereafter, the Committee changed its name back to "Steve Stockman for Senate." See Amended Statement of Organization, FEC Form 1, Feb. 28, 2015.

¹⁰ Dun and Bradstreet, *Center for the American Future, Inc.* profile. Retrieved May 24, 2016.

¹¹ See *id.*; Texas Secretary of State filing, Center for the American Future, Inc. (registered Aug. 28, 2013); CAF Supp. Resp. at 4 (Mar. 25, 2015).

1 Stockman's House campaign committee, Friends of Congressman Steve Stockman.¹² From
2 January 3, 2013, through October 15, 2013, Posey was also employed as Special Projects Director
3 of Stockman's congressional office.¹³

4 The mailer at issue was apparently distributed by CAF no later than February 24, 2014,
5 when it became the subject of a news article.¹⁴ The 16-page document was styled to look like a
6 newspaper it is titled *The Conservative News* and the front page contains the word "Free" near
7 the upper right corner. The heading states: "This is a print version of the online Conservative
8 News, available for download at CenterForTheAmericanFuture.com." The mailer includes
9 articles and photographs of Stockman, Stockman's primary opponent U.S. Senator John Cornyn,
10 and other political figures. The lead article on the front page is headlined, "Cornyn betrays Cruz,
11 funds Obamacare," next to a photograph of Senator Cornyn shaking hands with President Obama.
12 Other articles in the mailer contain headlines such as "Pro-Lifers: Cornyn Voted to Fund

¹² From January 30, 2013, through November 20, 2013, Posey signed and filed disclosure reports for Stockman's House campaign committee. See Friends of Congressman Steve Stockman Amended Statements of Organization (Jan. 31, 2013 and Jan. 14, 2014). In addition, Stockman's congressional committee made a \$4,956 disbursement to Posey on July 24, 2014, for "consulting fees." Friends of Congressman Steve Stockman October 2014 Quarterly Report at 8.

¹³ See Office of Congressional Ethics Report and Findings Review No. 13-6070 at 10 (Feb. 27, 2014).

¹⁴ The Complaint did not provide a copy of the mailer at issue. Rather, it contains a hyperlink to a press article dated February 24, 2014, which contained a hyperlink to *The Conservative News*, which was not functioning at the time the Complaint was received. See Nick Swartsell, *Group Responsible for Newspaper-like Mailings Has Ties to Stockman*, DALLAS MORNING NEWS, Feb. 24, 2014, <http://trailblazersblog.dallasnews.com/2014/02/group-responsible-for-newspaper-like-mailings-has-ties-to-stockman.html> ("Swartsell, *Group Responsible*"). The Commission obtained a copy of the mailer via an archived version of the CAF website from March 6, 2014. See <https://web.archive.org/web/20140306025347/http://centerfortheamericanfuture.com/>. The CAF website ceased functioning as of February 21, 2016. The *Conservative News* itself is not dated.

1 Abortion,” “Cornyn Maneuvers to Help Reid Pass Illegal Alien Amnesty,” “Cornyn Blasts Open
2 Carry Law,” and “Pro-gun groups back Stockman.” The mailer contains no disclaimer.¹⁵

3 The Complaint describes CAF’s mailer as “fake newspapers ‘praising’ Stockman and
4 ‘slamming’ Cornyn” and alleges it was coordinated with Stockman and his Senate campaign
5 committee.¹⁶ In responses filed before the indictments, Respondents denied the allegations in the
6 Complaint and request that it be dismissed. The Committee denied any illegal coordination
7 between it and CAF or that Posey was ever its treasurer.¹⁷ CAF’s Response also denies
8 coordination between it and the Committee, stating that its activities “were not conducted in
9 cooperation, consultation, or concert with or at the request or suggestion of Steve Stockman, the
10 Campaign or any agent of the Campaign.”¹⁸ Posey, by sworn affidavit, avers: “Neither Steve
11 Stockman, the Campaign, nor any agent of the Campaign had any material involvement or

¹⁵ The Commission notes that the newspaper-like mailers in this matter are similar to those distributed during Stockman’s past congressional campaigns by the Stockman campaign itself. These mailers were the subject of two previous enforcement matters. See MUR 3847 (Friends of Congressman Steve Stockman) (Commission found probable cause to believe, *inter alia*, that newspaper-like mailings related to Stockman’s 1994 campaign committee contained advertisements in support of Stockman’s candidacy and solicited contributions on his behalf, but failed to include the appropriate disclaimers, and accepted a conciliation agreement containing a \$40,000 civil penalty in settlement of the violations); MUR 6625 (Friends of Congressman Steve Stockman, *et al.*) (There were an insufficient number of votes to find reason to believe that three of Stockman’s 2012 congressional campaign committee’s newspaper-like mailings either failed to include a disclaimer or failed to comply with disclaimer specifications).

¹⁶ Compl. at 2. The Complaint quotes the terms “praising” and “slamming” from the cited press article. See Swartzell, *Group Responsible*. As evidence of the alleged coordination, Complainant asserts that CAF’s website contained a donor data file reflecting credit card transactions of donations to Stockman’s Senate campaign committee. Compl. at 1-2; Supp. Compl. (June 23, 2014).

¹⁷ Stockman Resp. at 1 (June 6, 2014). Respondents assert that the donor data file was a nonworking template developed by a web designer, and used to test web page functionality and to build Stockman for Senate and CAF’s respective websites, and that no committee donations were ever redirected to CAF or any other party. See Stockman Resp. at 1; Stockman Supp. Resp. at 2 (Apr. 6, 2015); CAF Supp. Resp. at 1-4.

¹⁸ CAF Resp. at 1.

1: substantial discussions with me, the Center, or any other officers or agents of the Center related to
2: the Center activities.”¹⁹

3: In Posey’s guilty plea, however, he admitted that the affidavit he submitted to the
4: Commission was false and was intended to “impede and obstruct an FEC investigation into
5: Stockman’s involvement in the printing, publication, and distribution” of the mailers.²⁰
6: Specifically, Posey admitted that the following statements in his affidavit were knowingly false:

7: (1) that the mailers “were not conducted in cooperation, consultation, or concert with or at the
8: request or suggestion of Steve Stockman, Stockman for Senate Campaign . . . , or any agent of the
9: Campaign;” and (2) that “[n]either Steve Stockman, the Campaign, nor any agent of the
10: Campaign had any material involvement or substantial discussions with [Posey], [CAF] or any
11: other officers or agents of [CAF] related to” the publication of the mailers.²¹ Rather, Posey
12: acknowledged in his Plea Agreement that he was aware at the time he made these statements to
13: the Commission that Stockman “personally supervised and directed” the publication and
14: distribution of the mailers.²²

15: With regard to the funding of the mailers, Posey’s Plea Agreement sets forth that knowing
16: that CAF’s activities were never intended to be independent of Stockman or his Senate
17: Committee, Posey falsely represented to a donor, Richard Uihlein,²³ that the mailers were

¹⁹ Posey Aff. ¶ 6.

²⁰ Posey Plea Agreement at 15.

²¹ *Id.* at 15-16.

²² *Id.* at 16.

²³ Posey’s Plea Agreement does not identify Uihlein by name, but rather as “Person B.” In the Order Denying Stockman’s Motion for Judgment of Acquittal, the court identifies Uihlein by name as the donor.

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1 independent expenditures by CAF and solicited a \$450,571.65 contribution from him to fund the
2 purported independent expenditure.²⁴ Uihlein testified at Stockman's trial that, when the
3 solicitation was made, he understood that the project would be independent of Stockman and his
4 campaign:

5 [Prosecutor]: And did you understand, based on the representations made to you, that the
6 advertising would be done independently of the defendant and his
7 campaign?
8

9 [Uihlein]: Yes.

10 [Prosecutor]: Was that fact important to you when you wrote this check?

11 [Uihlein]: Yes, it was.

12 [Prosecutor]: If you had been told that the expenditure would, in fact, be made in
13 coordination with the defendant, would you have written this check?
14

15 [Uihlein]: No, I wouldn't.²⁵

16 On or about March 14, 2014, the direct mail company refunded approximately
17 \$214,718.51 the unspent portion of the \$450,571.65 contribution – to CAF. Rather than return
18 this money to Uihlein, Posey used the funds to pay debts associated with Stockman's Senate
19 campaign and to finance personal expenses.²⁶

20 **III. LEGAL ANALYSIS**
21

22 The costs of printing and distributing the CAF mailer constitutes an in-kind contribution to
23 Stockman and Steve Stockman for Senate because it meets the Commission's "coordinated

²⁴ Posey Plea Agreement at 14.

²⁵ Order Denying Motion for Judgment of Acquittal at 2-3.

²⁶ Posey Plea Agreement at 16.

1 communication²⁷ three-pronged test: (1) payment for the communication by a third party;
2 (2) satisfaction of one of the “content” standards;²⁸ and (3) satisfaction of one of the “conduct”
3 standards.

4 The payment prong of the coordinated communication test is satisfied because the
5 available information shows that CAF, using funds obtained from Uihlein, paid to produce and
6 distribute the mailer.²⁹ The content prong also appears to be satisfied because *The Conservative*
7 *News* is a public communication that clearly refers to Stockman and was publicly distributed or
8 disseminated in Stockman’s jurisdiction — Texas — within 90 days of the March 4, 2014, Senate
9 primary election.³⁰

10 The conduct prong is satisfied because Stockman personally supervised the publication
11 and distribution of the mailer,³¹ thus satisfying one or more of the following types of conduct:

²⁷ See 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.21(b)(1).

²⁸ The content standards are: (1) an electioneering communication; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, a candidate’s campaign materials; (3) a public communication containing express advocacy; (4) a public communication that refers to a clearly identified Federal candidate that is publicly distributed or disseminated 90 days or fewer before a primary or general election, and was directed to voters in the jurisdiction of the clearly identified candidate; and (5) a public communication containing the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

²⁹ See Posey Plea Agreement at 14-16; see also Order Denying Motion for Judgment of Acquittal at 2-3.

³⁰ See 11 C.F.R. § 109.21(c)(4)(i). *The Conservative News* appears to meet the definition of “public communication” because it is a newspaper or a mass mailing to the general public, as *The Conservative News* states that it “is a print version of the online Conservative News,” and CAF admits that it distributed its newsletters in paper form. See 52 U.S.C. § 30101(22); 11 C.F.R. § 100.26; Posey Aff. ¶ 4. According to the Criminal Indictment, Stockman and Posey coordinated with two direct mail companies to deliver hundreds of thousands of copies to voters, indicating that the mailer was disseminated in quantities exceeding 500 pieces, thus also qualifying as a “mass mailing.” See Criminal Indictment at 20; 52 U.S.C. § 30101(23); 11 C.F.R. § 100.27. Stockman was clearly identified in the mailer because photographs of him and references to his name and position as a congressman appear on each page of the mailer. Finally, *The Conservative News* itself is undated, but *The Dallas Morning News* article hyperlinking to it is dated February 24, 2014, suggesting that the mailer was disseminated in Texas around the time of the article, which was within 90 days of the Republican primary election for U.S. Senate in Texas on March 4, 2014.

³¹ Posey Plea Agreement at 16.

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1 (1) the communication was created, produced, or distributed at the request or suggestion of a
2 candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions
3 regarding the communication; and (3) the communication was created, produced, or distributed
4 after substantial discussions with the campaign or its agents.³² Accordingly, CAF and Jason
5 Posey made, and Steve Stockman and Steve Stockman for Senate received, in-kind contributions
6 in the form of a coordinated communication.

7 Under the circumstances presented in this matter, the Commission does not believe
8 pursuing the violation as to Stockman or his Senate Committee is necessary to adequately
9 vindicate the Commission's civil enforcement interests under the Act. Stockman was charged
10 and convicted of, among other offenses, aiding and abetting the making of an excessive
11 contribution in violation of 52 U.S.C. §§ 30116(a)(1)(A) and (a)(7)(B)(i) stemming from the same
12 facts as presented in the instant matter. His motion for a judgment of acquittal was denied, and he
13 was ordered to pay \$1.2 million in restitution. He will also face a prison sentence which will be
14 determined at this hearing scheduled for November 7, 2018.

15 As to Posey, he pled guilty to mail fraud, wire fraud, and money laundering, the
16 underlying facts of which, as presented in the factual basis of his plea, directly relate to MUR
17 6793. He agreed to begin making restitution payments in anticipation of his restitution debt to be
18 determined at his sentencing hearing scheduled for November 20, 2018. In addition, CAF is
19 dissolved as of January 2016.³³ Further, Steve Stockman for Senate has been defunct since

³² See 11 C.F.R. § 109.21(d)(1), (2), (3).

³³ See n.10, *supra*.

